

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

IN RE: SANTA FE NATURAL TOBACCO COMPANY  
MARKETING and SALES PRACTICES and PRODUCTS and  
PRODUCTS LIABILITY LITIGATION

LEAD CASE NO. 1:16 MD 02695 JB/LF

Transcript of Telephonic Status Conference  
Proceedings before The Honorable James O. Browning,  
United States District Judge, Albuquerque, Bernalillo  
County, New Mexico, commencing on October 21, 2020.

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1 THE COURT: All right. Good afternoon  
2 everyone. I appreciate everybody making themselves  
3 available to me this afternoon.

4 The Court will call In Re: Santa Fe Natural  
5 Tobacco Company Marketing and Sales Practices and  
6 Products Liability Litigation, Lead Case No. 1:16 MD  
7 02695 JB/LF.

8 If the counsel will enter their appearances  
9 for the plaintiffs.

10 MR. SCHLESINGER: Good afternoon, Judge.  
11 I'll start out. Scott Schlesinger for the plaintiff.

12 THE COURT: All right. Mr. Schlesinger,  
13 good afternoon to you.

14 Anybody else from the plaintiffs on the  
15 phone that want to enter an appearance this  
16 afternoon?

17 MS. WEINER: Hi, Judge, good afternoon.  
18 Melissa Weiner, Pearson, Simon & Warshaw, on behalf  
19 of the plaintiffs.

20 THE COURT: All right. Ms. Weiner, good  
21 afternoon to you.

22 Anyone else? Sounds like somebody else?

23 MR. MATT SCHULTZ: Matt Schultz, Levin  
24 Papantonio Firm on behalf of the plaintiffs, Your  
25 Honor.

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1 THE COURT: Give me that again. I didn't  
2 quite catch you on that. Matt Schultz?

3 MR. MATT SCHULTZ: Yes, Your Honor. Matt  
4 Schultz, Levin Papantonio.

5 THE COURT: All right. Mr. Schultz, good  
6 afternoon to you.

7 Anyone else on the plaintiffs' side?

8 MS. LONG: Your Honor, Nancy Long on behalf  
9 of the plaintiffs as well.

10 THE COURT: Ms. Long, good afternoon to  
11 you.

12 Anyone else on the plaintiffs' side?

13 MR. GDANSKI: Good afternoon, Judge.  
14 Jonathan Gdanski for the plaintiff.

15 THE COURT: Mr. Gdanski, good afternoon to  
16 you.

17 Somebody else on the plaintiffs' side want  
18 to enter an appearance?

19 MR. HABERMAN: (Unintelligible.)

20 THE COURT: Say that again.

21 MR. HABERMAN: (Unintelligible.)

22 THE COURT: All right. We're still not  
23 picking you up. Do you want to spell your name for  
24 the court reporter?

25 MR. HABERMAN: Sure. Jeffrey Haberman.

1 THE COURT: All right. Mr. Haberman, good  
2 afternoon to you.

3 Anybody else on the plaintiffs' side that  
4 wants to enter an appearance?

5 MS. ANDERSON: Erika Anderson, Your Honor,  
6 on behalf of the plaintiffs.

7 THE COURT: All right. Ms. Anderson, good  
8 afternoon to you.

9 Anyone else on the plaintiffs' side?

10 MR. KOLUNCICH: Good afternoon, everyone.  
11 Nicholas Koluncich on behalf of plaintiffs.

12 THE COURT: All right. Mr. Koluncich, good  
13 afternoon to you.

14 Anyone else on the plaintiffs' side?

15 All right. For the Reynolds Group.

16 MR. MONDE: Good afternoon, Judge. This is  
17 David Monde on behalf of the defendants. And if I  
18 may, I wanted to introduce my partner. Meir Feder,  
19 F-E-D-E-R, who will be taking the lead on our class  
20 and Daubert arguments. And I just wanted to do a  
21 proper introduction for the Court.

22 THE COURT: All right. Mr. Monde, Mr.  
23 Feder, good afternoon to you.

24 MR. FEDER: Good afternoon, Your Honor.

25 THE COURT: Anybody else on the defense

1 side?

2 MR. SCHULTZ: Your Honor, this is Andrew  
3 Schultz from the Rodey Law Firm for the defendants.

4 THE COURT: All right. Mr. Schultz, good  
5 afternoon to you.

6 Anyone else?

7 MS. REISMAN: Good afternoon, Your Honor  
8 this is Sharyl Reisman on behalf of the defendants.

9 THE COURT: All right. Ms. Reisman, good  
10 afternoon to you.

11 MR. BIERSTEKER: And Peter Biersteker, Your  
12 Honor.

13 THE COURT: Say that one more time.

14 MR. BIERSTEKER: Sure. Peter Biersteker.

15 THE COURT: All right. Mr. Biersteker,  
16 good afternoon to you.

17 Anybody else for the Reynolds Group?

18 MR. MONDE: That should be it for Reynolds,  
19 Judge.

20 THE COURT: All right. Anybody else on the  
21 phone that blipped in and wants to enter an  
22 appearance?

23 All right. Well, let me give you two  
24 thoughts. I'll certainly hear what anybody wants to  
25 say, but these two thoughts may be helpful to you as

1 we discuss.

2 First of all, I get up every morning during  
3 the pandemic and try to tell myself to do three  
4 things during the day: One, be compassionate,  
5 because I know everybody is approaching the pandemic  
6 in a different way; be flexible; and be compromising.  
7 So I have learned over the last six months to  
8 probably do things that I never thought I'd have to  
9 do or do or learn to do. And I'm not saying that I'm  
10 great at everything. But we're all making  
11 adjustments. Chances are, if you -- if the two sides  
12 here agree to do something, I will go along. So you  
13 don't have to worry too much about pleasing the judge  
14 because I'm trying to be flexible and compromising.  
15 And if it works for you, it will probably work for  
16 me. So if y'all are getting along, and y'all have  
17 done a lot of things through this case and gotten  
18 along, if y'all got along and, you're saying: This  
19 is the way we want to do this hearing, and we'll work  
20 together to get it done, and this is what we've  
21 compromised and come up with, chances are I'll go  
22 along with it, too.

23 The second thing I wanted to mention is  
24 that as far as the Daubert hearings, here is sort of  
25 my rule on Daubert hearings, but again, I can be

1 talked into probably what you want. Generally, what  
2 I do on Daubert hearings is if the proponent of the  
3 expert wants to have that person here, that's fine.  
4 I always am reluctant -- and maybe even hate -- to  
5 exclude an expert of a party without giving the  
6 proponent of that expert an opportunity to bring the  
7 expert here or Zoom or however we do it, and have me  
8 see and hear the direct examination,  
9 cross-examination of that witness. But I don't  
10 require it. So, you know, this is probably not a  
11 case where people are, you know, short on money and  
12 resources, but a lot of cases in New Mexico, you  
13 know, it's hard for, particularly a plaintiff, to put  
14 on an expert and pay for the expert to be here. So I  
15 generally will defer to the proponent. If somebody  
16 says, "Oh, Judge, you've got to have him here," and  
17 it's the opponent, I'm a little more reluctant to  
18 start forcing witnesses to be here. But I'll listen.  
19 So largely, if you have worked things out, that's  
20 fine, and I'm here, then, to probably resolve  
21 disputes between you.

22 But as I looked over your two-page letter  
23 to me, and then also reviewed the order extending the  
24 deadlines that we filed back at the end of September,  
25 those were two things that I thought I might be able

1 to say at the beginning that would maybe help us with  
2 our discussion this afternoon. But I don't know.

3 But why don't I start with calling on the  
4 plaintiffs. So Mr. Schlesinger, I'll call on you.  
5 And if somebody else has a different way of telling  
6 me what the issues are for today and what you need  
7 from me and what you want from me, let me know. But  
8 I'll start with you, Mr. Schlesinger.

9 MR. SCHLESINGER: May it please the Court.  
10 Thank you, Judge.

11 THE COURT: Mr. Schlesinger.

12 MR. SCHLESINGER: The first thing I would  
13 say is I'd like to determine from the Court if, in  
14 fact, the hearing will be conducted by Zoom. I'm  
15 willing to do so. I'm pretty sure, if I recall my  
16 conversation with Mr. Monde, he's willing to do that  
17 as well. And that we would conduct these hearings on  
18 the 14th or the 18th; not live in person, but by a  
19 Zoom, and even with whatever witnesses we present, we  
20 present them as well by videoconferencing. If that's  
21 good with Your Honor, if that's Your Honor's  
22 preference that's good with us, and that would be our  
23 preference as well.

24 THE COURT: Mr. Monde, is that okay with  
25 you?



1           MR. MONDE: Judge, in a word it is. I had  
2 the opportunity to do a meet and confer with some of  
3 Mr. Schlesinger's colleagues yesterday. Obviously,  
4 first, we're going to do whatever the Court would  
5 like us to do. But given your opening comments,  
6 while we would all like to be present in Albuquerque  
7 in December, that does not seem feasible as we sit  
8 here.

9           And so the other point that we agreed on;  
10 that neither side wants anyone to be advantaged or  
11 disadvantaged by being present in the courtroom, some  
12 people, and other people by Zoom. So what we agreed  
13 is that it would be all or nothing. So that no one  
14 feels any pressure to appear live, when they don't  
15 really want to do that, or don't feel they can do  
16 that safely. So I would simply say that we concur in  
17 holding the hearings by Zoom from being out there. I  
18 know that the courtroom is wired for that sort of  
19 thing and high tech. But on behalf of all the  
20 parties, I want to offer whatever assistance we can  
21 provide to the Court to facilitate a virtual hearing  
22 that runs smoothly.

23           THE COURT: Well, I think we have an  
24 agreement, we're going to do this by Zoom, and that's  
25 fine. Right at the moment -- your local counsel,

1 Ms. Long, Mr. Koluncich, and Mr. Schultz can probably  
2 tell you, right at the moment I don't think anybody  
3 wants to be in this state. So it's tricky getting  
4 in. It's tricky doing things. We're operating here.  
5 I had a sentencing yesterday where I had people in  
6 the courtroom. But I'm sitting here talking to Zoom  
7 a lot. That's fine. So unless y'all tell me  
8 otherwise, we'll plan on it being by Zoom.

9 Here are the things you may want to give  
10 some thought to. Mr. Gonzales is sitting right in  
11 front of me. You can work with him. If Mr. Gonzales  
12 says, Yep, he can handle it all, that's fine. We did  
13 have -- I did have a high profile case about two  
14 weeks ago where, put it kindly, I thought the clerks  
15 office let us down -- not Mr. Gonzales -- let us  
16 down, in that the public could not be present, and  
17 some people who were amicus in the case could not be  
18 present. So I've had experience with sort of a major  
19 breakdown of a Zoom call that did not allow either  
20 the public or amicus to be involved. Now, that's not  
21 probably what we're looking here, but I am  
22 disappointed in the performance of that. So Mr.  
23 Gonzales may say, Yep, he can handle it all. If he  
24 doesn't, then his superior is my old courtroom  
25 deputy, K'Aun Wild, who y'all may have started this

1 case with and know her. She is quite available to  
2 assist either Mr. Gonzales, y'all, whatever. But I  
3 guess I would encourage you to maybe -- we're looking  
4 at five days here. That's going to be -- we all are  
5 probably getting a little weary of doing everything  
6 by Zoom. And five days is a lot. I've done a lot of  
7 stuff by Zoom. But still, five days is going to be a  
8 record for me as far as Zooming for five days. And  
9 that's fine. But y'all may want to try to interface  
10 with Mr. Gonzales, Ms. Wild, and whoever they point  
11 you to to make sure that when we start on Monday  
12 morning, at 8:30 or whenever we're starting, we get  
13 off to a good start and we don't have any problems.  
14 So I'm not threatening, warning, or anything like  
15 that. It's just sort of -- it may make sense for  
16 y'all to have some discussions with Mr. Gonzales  
17 and/or Ms. Wild, and then whoever they point you to  
18 in the building to make sure we get off to a good  
19 strong start.

20 MR. MONDE: We'll do that, Judge.

21 THE COURT: Anything else on that subject?  
22 Mr. Schlesinger? Mr. Monde? Or are we ready to go  
23 to the next subject?

24 MR. SCHLESINGER: Only thing on that,  
25 Judge, and it probably will come up again, is that

1 you've just given us a heads-up on the hours of the  
2 day that you'll be conducting the hearing, so we can  
3 plan to be on the call and off the call depending  
4 what time you start, what time you break, things like  
5 that.

6 THE COURT: Yeah, I know y'all are all  
7 scattered out. But largely, you're probably on the  
8 east coast, so I know these are going to be hard for  
9 you. But here's the problem I have, if I don't run  
10 it New Mexico time, the security in this building, my  
11 court reporter, Mr. Gonzales has a family, my clerks.  
12 It just gets hard for me to really run a courtroom  
13 with security and everything like that unless I keep  
14 sort of normal hours.

15 So here's what I would suggest, but I'm  
16 open to something different if y'all are. We start  
17 at 8:30; we work an hour and a half at a time, so  
18 that would put us about 10:00. We take our first  
19 break at 10:00, and then we pick back up at 10:15; we  
20 go to 11:45. And here's where I get flexible and  
21 y'all can do it either way. I think Ms. Bean will  
22 agree to do it this way. We take a 15-minute break,  
23 then we go another hour and a half; we take a late  
24 lunch New Mexico time. If that's too late for you,  
25 we take it at 11:45; we pick up back at 12:45, and we

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1 go to -- what is that going to be, 1:15, 2:15; take a  
2 break at 2:15; start again at 2:30. And that goes to  
3 4:00. Take a 4:15 break, and we go to 5:30 New  
4 Mexico time, call it a day. That's a lot of work,  
5 but that's what I would offer and propose, or  
6 otherwise it gets difficult at this end to start  
7 operating under maybe east coast time. What do you  
8 think about that, Mr. Schlesinger?

9 MR. SCHLESINGER: If it please the Court, I  
10 think that I think we've all anticipated that we  
11 would work on New Mexico time. I have, even though  
12 I'll be on the east coast. I'm working on your time,  
13 Judge, your courtroom, your time. I'm fine to start  
14 at 8:30. And I'm also fine with taking a short break  
15 at 11:45 for 15 minutes, and working for another hour  
16 and a half. I'm fine with doing that. But I'm  
17 not -- I think that's a great idea. So, if Your  
18 Honor wants to do that, and if Mr. Monde is good  
19 with, that I'm good with it.

20 THE COURT: It doesn't matter. It's going  
21 to be a little late lunch for y'all. And if you'd  
22 prefer to take it -- Ms. Bean doesn't care, I don't  
23 think -- she doesn't care. So it's kind of y'all's  
24 call. And you don't have to decide it today. Do you  
25 have any preference, Mr. Monde?

1 MR. MONDE: The schedule you outlined is  
2 fine here, Judge. And I suppose, just depending on  
3 where we are on a particular day, we can always fine  
4 tune this. But an hour break for lunch around 11:45  
5 Mountain time sounds just right.

6 THE COURT: Okay. So you kind of prefer to  
7 take the lunch break at that point, which puts it a  
8 little earlier, rather than taking it a little later,  
9 kind of in the 1:30 range here, which would be very  
10 late for y'all, and would put us 1:30 to 2:30. You'd  
11 prefer to do it about 11:45 here?

12 MR. MONDE: Judge, very slight preference.  
13 Again, we're going to do what the Court would like us  
14 to do. And all else being equal, you know, I think  
15 11:45 as a lunch break -- it's 1:45 east coast  
16 time -- makes the most sense. But again, if we're in  
17 the middle of an argument, and it just makes sense to  
18 take a short break and continue through until later,  
19 all the parties are going to be flexible on that, I'm  
20 sure.

21 THE COURT: So is that all right with you,  
22 Mr. Schlesinger? We'll just plan on the lunch break  
23 coming at 11:45?

24 MR. SCHLESINGER: No problem, Judge.

25 THE COURT: Okay. We'll go with that.

1 All right. What's the next issue we need  
2 to go to, Mr. Schlesinger?

3 MR. SCHLESINGER: I think that we need to  
4 get a sense of how Your Honor would like to handle  
5 the presentation of the class certification motion.  
6 I'm accustomed to arguing it with witnesses. And  
7 then I also know that some of the witnesses may be  
8 subject to Daubert challenges. And it's the  
9 plaintiffs' position that that can all be done  
10 together, so as not to have to bring witnesses twice.  
11 And I think maybe Mr. Monde had some ideas of  
12 staggering things where Daubert would precede some of  
13 the actual class certification. Plaintiff is pretty  
14 strongly in favor of just going forward with the  
15 class certification motion and dealing with the  
16 Daubert as it comes, entrusting the Court to make the  
17 decisions on which experts it accepts or excludes,  
18 and then rule on the class certification based on the  
19 evidence that the Court accepts as being supportive  
20 of the class certification motion, or the evidence  
21 that the Court accepts from the defendant in  
22 opposition to the class certification motion.

23 And I would just point Your Honor to the  
24 schedule that we're running along with this whole  
25 entire time, we always agreed to -- and we pushed

1 back the dates -- but we've always -- it's a hearing  
2 on the motion for class certification and Daubert  
3 motions for five days. We always end up that way. I  
4 think that's the next issue, or the next matter that  
5 we need the Court's guidance on.

6 THE COURT: I'll hear from Mr. Monde in  
7 just a minute, but let me give you some thoughts.  
8 The way, as a judge, I approach it, I think of the  
9 end product here.

10 I hope I have the number right. I think  
11 somebody said there was nine expert witnesses, and  
12 then we've got Daubert issues, we've got a class  
13 certification. So I'm thinking about what is the  
14 product? What is the product I've got to put out?  
15 And I need to get a sense as to what your  
16 expectations of me are and what you want my product  
17 to be. I guess I was thinking that probably y'all  
18 probably looked at some of my class action opinions,  
19 particularly in the ones that I have done in some of  
20 these oil and gas cases in Northern New Mexico. I'm  
21 trying to think of -- Anderson Living Trust, those  
22 cases that we've done up there. My memory, with some  
23 pretty experienced class counsel in those cases and  
24 pretty good defense counsel in those cases is that  
25 the product that I gave them wasn't separate opinions



1 on their Daubert people. What I ended up doing was  
2 doing a class certification opinion and largely in  
3 the footnotes is I sorted through the evidence making  
4 findings of fact, decided what evidence was  
5 admissible and what wasn't, so that largely the  
6 Daubert issues were resolved in maybe some lengthy  
7 footnotes when it came time to decide whether that  
8 witness was going to be admitted, or portions, which  
9 is more likely the case, portions of the witness are  
10 going to be admitted and some maybe aren't. So if  
11 I'm thinking clearly, and I have a pretty good  
12 visibility as to what the end product is going to be,  
13 it would seem to me -- and I think I've done it both  
14 ways -- but it would seem to me that it might be  
15 better to just bring the people in, put the evidence  
16 in -- and I'm not saying don't make the Daubert  
17 arguments early. It seems to me that it might make  
18 sense to have Daubert arguments first so that I'm  
19 attuned to what to be listening for and watching for  
20 as they testify. But I guess I'm not quite sure we  
21 need to see them twice.

22 So I guess this is what -- and I'm thinking  
23 out loud -- is that you come in, and let's spend some  
24 time with Daubert motions. If you want to bring the  
25 witness in at that point, that's fine. If you want

1 to just come in and make Daubert motions on -- the  
2 Daubert motions with the transcripts and those  
3 things, you make them then. And then, whenever we  
4 bring them in, let's just do them all at one time,  
5 that person; you put them on, we bring in all the  
6 evidence. I don't exclude anything on the basis of  
7 Daubert during the testimony. I take the testimony.  
8 And then, as I write the opinion, I make rulings on  
9 the Daubert. I think you will see -- I hope you will  
10 see that I have been disciplined enough not to just  
11 be, you know, the kind of judge you just bring in the  
12 dump truck and dump it in here, and I'm not going to  
13 be a judge and rule on the Daubert issues. I will  
14 rule on them. It's just a timing issue. And I don't  
15 think I'm going to be in good shape to rule during  
16 that week on the Daubert issues.

17 So I guess what I would propose is that we  
18 have a day or two at the beginning in which we may  
19 have Daubert arguments. If you want to bring in your  
20 witness at that point, fine. Let's just get all the  
21 testimony out of that expert done at that point. If  
22 you want to just have arguments at that point, that's  
23 fine, and then, when the witness comes in and  
24 testifies during the -- what I'll call the class  
25 certification part of the week, then we take all the

1 testimony there including any questions that may be  
2 related to Daubert.

3 So let me go -- because if I heard what Mr.  
4 Schlesinger said, he thought that might be pretty  
5 good, but maybe not after I described it. Let me go  
6 to Mr. Monde first. Mr. Monde, what do you think  
7 about that sort of approach? You may be the one  
8 that's more reluctant on that one.

9 MR. MONDE: Well, Judge, we agree about  
10 hearing the Daubert arguments first. I'm going to  
11 pass the baton to my partner Meir Feder, who, as I  
12 said, will be taking the lead on that aspect of  
13 things, to flush out our position a little bit more.

14 THE COURT: All right. Mr. Feder.

15 MR. FEDER: Thank you, Your Honor.

16 From the defendant's standpoint, I think  
17 there are two potential issues it's raising. One of  
18 them just about the amount of time available for the  
19 hearings in December, in total. Particularly if what  
20 we're talking about is, it sounds like, is hearings  
21 where we're going to be hearing from a number of  
22 witnesses with live testimony with eight Daubert  
23 motions, plus obviously a pretty involved class  
24 certification motion. I think that, if we're  
25 actually going to be trying to do that in five days,

1 that we will end up giving short shrift to some  
2 things that may require more time. And so I just  
3 want to bracket that argument, or concern, as one  
4 thing to think about.

5 The second thing is that, at least as to a  
6 couple of the experts, we think that it would make a  
7 lot more sense to proceed first with those, and get  
8 some resolution on those, because they could either  
9 be dispositive as to class certification or at a  
10 minimum could clarify some issues for class  
11 certification.

12 There are two experts I have in mind in  
13 particular. The most obvious are plaintiffs' --  
14 example is plaintiffs' damages expert, Dr. Dubay  
15 (phonetic). If his testimony were to be excluded,  
16 then the plaintiffs would have no basis for  
17 class-wide damages model, so that would be  
18 dispositive. That's sort of an example of the  
19 witness as to whom the Daubert ruling, you know,  
20 could save the need for other hearings.

21 The other one is Dr. Pearson, who is the  
22 plaintiffs' survey expert. And again, if she were to  
23 be excluded, that would create big obstacles for  
24 them. But even if you were to rule that her  
25 testimony was (unintelligible due to static) in part

1 but not in whole, I think that could well affect the  
2 way some of the issues on class certification get  
3 argued. So that we get better presented to you in a  
4 way that doesn't have to account for sort of a series  
5 of contingencies as to what evidence might be coming  
6 in or not. So, you know, we do think that there  
7 would be a lot to be gained, at least as to those two  
8 motions, to have them addressed first (unintelligible  
9 due to static).

10 THE COURT: Mr. Feder. Mr. Feder, you're  
11 going to have to go back about a paragraph. You've  
12 got a lot of static on your phone, and you cut out on  
13 us. So go back about a paragraph and repeat that.

14 MR. FEDER: I apologize. I'm going to  
15 hypothesize that it's the headphone that I'm using  
16 and pull the headphone out and try talking straight  
17 into the phone. In any event -- I'm not sure where  
18 the static came in -- but I think that we have the  
19 issue of time overall, and the issue of sequencing,  
20 from sequencing the plaintiffs' damages expert,  
21 Dr. Dubay is an example of one where, if he were to  
22 be excluded, that would just be basically dispositive  
23 of class certification.

24 As to their survey expert, Dr. Pearson, I  
25 think, if she were to be excluded, it would be the

1 same thing. But if she were to be excluded in part,  
2 I think that, you know, depending on what Your Honor  
3 decided, that could change the complexion of what's  
4 argued on issues like commonality and predominance in  
5 ways that would allow the parties to speak much more  
6 directly to what you ultimately would have to decide  
7 than they could if it were being addressed, you know,  
8 on various contingencies, depending on whether she  
9 is -- her testimony is admitted in part, and which  
10 part, and so forth.

11 THE COURT: Well, let me make a couple  
12 observations, and then you may need to group with  
13 your attorneys and then put out a proposal. I think  
14 it's going to be real hard for me to have a five-day  
15 hearing, listen to Daubert issues on Monday and  
16 Tuesday; give you a ruling, and then that impact the  
17 rest of the week. I don't think, knowing myself,  
18 that's going to be realistic. You're not going to  
19 get a ruling that week probably on these Daubert  
20 issues. So if you think that's going to shortcut  
21 stuff to put on Daubert issues first on Monday and  
22 Tuesday; get a quick ruling from me, and that  
23 eliminate the case, I don't think that's going to  
24 happen. So if that is helpful to you, then you may  
25 want to rethink what you're requesting. Because I

1 don't think that's going to happen. You're probably  
2 going to put on a week's worth of work, and we just  
3 need to brace ourselves for it, get it done, and I'll  
4 sort it out when I write the opinion.

5 If you're telling me that everybody would  
6 love to get together earlier and have a day or two in  
7 which we hear some critical witnesses, and then we  
8 pause and I write an opinion on Daubert issues on a  
9 couple of witnesses, then we can talk about that.  
10 But given what I just said what's your thoughts, Mr.  
11 Feder?

12 MR. FEDER: My thought is that, obviously,  
13 we are going to present our side of the case in  
14 whatever time the Court has available. I think that  
15 when the schedule was set, I'm not sure that we knew  
16 that there were going to be eight Daubert motions to  
17 address. I think that if we attempt to address them  
18 all in part -- forgetting about ruling on them -- I  
19 think to address them all in part of a week is  
20 probably going to end up -- particularly if Mr.  
21 Schlesinger is contemplating testimony, as it sounds  
22 like he may be -- I think it's going to be awfully  
23 tight and result in not necessarily being able to do  
24 justice to all of these eight motions.

25 THE COURT: Well, let me go back to you,

1 Mr. Schlesinger. I made a new comments before we  
2 really fleshed out the plaintiffs' position. Given  
3 my comments, given what -- I mean, if you need more  
4 time, we'll find more time. I mean, I don't want to  
5 shortchange you on time. So, you know, I'm not  
6 saying five days and that's it; you've got to put on  
7 Daubert motions and a class certification in five  
8 days. So I can work with you on flexibility on time.  
9 I can work with you on -- if you want to do Daubert  
10 motions that week, and then you tell me, Judge, go  
11 write an opinion on it and give us your opinion on  
12 Daubert motions, we'll come back and do the class  
13 certification.

14 The one caveat I'd just throw out there is  
15 sometimes people think Daubert motions are decided in  
16 a vacuum, and it's like summary judgment motions,  
17 like a vacuum. And sometimes it's not. I mean,  
18 sometimes we are killing ourselves, I think, in a  
19 Daubert hearing over this testimony. And a lot of  
20 times, when we really get to the testimony, either at  
21 trial or the class certification or whatever, you  
22 know, we just need a bit of it here, a bit of it  
23 there. And you don't need to wipe out the whole  
24 expert.

25 So I'll do it any way y'all want to, if



1 y'all can agree. But sometimes I think Daubert  
2 motions sometimes are better thought out and better  
3 decided in a real world context, rather than  
4 sometimes the hypothetical, theoretical feeling that  
5 a Daubert issue has.

6 But, anyway, let me hear from you, Mr.  
7 Schlesinger. I've been talking probably too much.

8 MR. SCHLESINGER: Not at all, Judge. It's  
9 good to get the Court's hint. And if it please the  
10 Court, what you first said your preference was  
11 sounded exactly like the way I think it should go. I  
12 want to remind the Court that forever the scheduling  
13 order has always contemplated a hearing on a motion  
14 for class certification. And I don't want the tail  
15 wagging the dog on behalf of the plaintiff, with the  
16 Court's indulgence, by making the Daubert motions  
17 predominant. Because they are not. I have to  
18 disagree with my learned opposing counsel, none of  
19 the two experts that he has a Daubert motion pending  
20 against me -- he's only got two against me --  
21 Ms. Pearson and my damages expert. Neither one of  
22 them are dispositive. And much as you said, there  
23 are bits and pieces that when you hear all the  
24 testimony, you may pick and choose some of it as  
25 being satisfactory to the Court and some is not.

1           You said the end product is going to be a  
2     ruling on class certification interspersed with  
3     whatever decisions Your Honor makes with regard to  
4     the validity of the experts' evidence. So that  
5     you'll only include that evidence that you accepted.

6           So what we should be doing, because we have  
7     the burden of proof -- and we don't need more than  
8     five days, and we don't need any preliminary hearing.  
9     I think Your Honor will find that we're going to be  
10    completely done with all the briefing the better part  
11    of a month ahead of this. We've already submitted  
12    our Daubert motions. More importantly, the defendant  
13    has already submitted their Daubert motions. So  
14    you'll have a familiarity with what it is that they  
15    find or that they suggest is lacking in our  
16    witnesses' position. So Your Honor is going to come  
17    into the hearing with some knowledge about that.

18          You're also going to see all of our  
19    experts' report, the depositions, are taken. We're  
20    going to try to make the presentation that adds color  
21    to what's already in the amount of paperwork that  
22    Your Honor will probably have digested substantially  
23    before you ever hear us argue it.

24          I'm happy to split the time that we use  
25    evenly with Mr. Monde. We can work out the schedule

1 of how we present things to Your Honor. But if I had  
2 my druthers, what you first said about how you'd like  
3 to go about doing it would work for me on behalf of  
4 the plaintiffs, and that is Monday morning we can  
5 begin our presentations. If there are any  
6 preliminary matters to take up, we can give an  
7 opening overview of what we intend to present and  
8 what our principal arguments are in favor of class  
9 certification. Mr. Monde and his team can give an  
10 opening to lay out how they oppose it. And then  
11 we're going to present evidence, whether it's  
12 experts, the video depositions of all the experts  
13 that have already been deposed and put on video, or  
14 witnesses on the videoconference live to flush out  
15 their opinions or perhaps focus on the key points of  
16 their opinion. I think that that's how we, as the  
17 plaintiff, would much prefer to do it. And it's also  
18 the stipulation that we've made with opposing  
19 counsel, now going back for quite some time, because  
20 the scheduling order, the order extending certain  
21 deadlines, is just a reiteration of different dates  
22 on a motion for a hearing on a motion for class  
23 certification. So it doesn't say hearing on motions  
24 for Daubert or dispose of Daubert first.

25 I've looked at the law, and I see how Your

1 Honor approaches it. I don't want the Daubert tail  
2 wagging the dog. And I would say, just as one point  
3 of -- you know, of consideration, that the two  
4 witnesses who we are -- there is one witness they  
5 moved for Daubert that's a rebuttal, so that's not a  
6 moment. Ms. Pearson is backed up by other witnesses  
7 with similar testimony to hers, and she has  
8 impeccable credentials, if I may say so, and I think  
9 Your Honor will see that her work product meets all  
10 the minimum and maximum requirements of Daubert even  
11 on the papers. And our economist, even though we  
12 have other damages beside economic damages, that's  
13 injunctive relief, so the economist is no way  
14 dispositive. But Mr. Dubay is also impeccably  
15 credentialed. We'd like to present at least some of  
16 his testimony live to you. I think that on the  
17 papers, Your Honor may already be somewhat persuaded  
18 these are satisfactory to give you evidence. So  
19 you'll have an idea before we ever have the hearing.

20 I suppose if one of our witnesses looks,  
21 you know, shaky based on Mr. Monde's arguments  
22 against him, and Your Honor can express that to us,  
23 and say: I have a concern. Are you ready to shore  
24 this guy or this lady up, when you put him or her on  
25 the witness stand?

1 But in terms of what we want, we want to go  
2 forward with the class certification Monday morning.  
3 We want to start just like a regular trial, treat it  
4 like a trial, the evidentiary, and let Your Honor  
5 decide how you want to write it up, and you can --  
6 let you edit out those witnesses who don't pass  
7 muster under the Daubert. But that should be  
8 derivative to the actual class cert hearing. That's  
9 the plaintiffs' position, please the Court.

10 THE COURT: Well, let me tweak that a  
11 little bit. I guess I'm thinking that maybe we take  
12 a little bit of Monday, I guess that's what I'm  
13 thinking -- Mr. Feder may say that's not going to be  
14 enough, and then we'll have to figure out -- but some  
15 of Monday, and let him make a presentation on his  
16 Daubert argument so that my antennas go up and I'm a  
17 more intelligent listener and watcher during the  
18 week. If I was inclined to go a little bit that  
19 approach, how would you tweak, Mr. Schlesinger, your  
20 proposal of how to deal with the week?

21 MR. SCHLESINGER: You know, I'm used to --  
22 one of the things I'm used to -- and Mr. Monde will  
23 attest -- is with some of the tobacco defendants we  
24 routinely deal with, they usually have some pretrial  
25 matters they want to take up. And unlike a lot of

1 trials I've done over the years, the pretrial matters  
2 with "industry" are often a bit involved. So if we  
3 wanted to earmark the morning for defense counsel to  
4 lay out their Daubert concerns, you know, so that we  
5 could have a back and forth about that; we could hear  
6 from Your Honor whatever preliminarily you discern  
7 from the materials you've already had available on  
8 Daubert to consider; we'll respond in the morning,  
9 and then maybe by after the lunch hour we can launch  
10 into an opening statement and start presenting  
11 witnesses. We're happy to do that.

12 The alternative, I guess, would be to just  
13 start as I originally suggested with opening  
14 statements, and they can lay out in their opening  
15 statement their position as to Daubert. But if Your  
16 Honor is of a mind to let them fuss about Daubert in  
17 the morning on Monday, I would accommodate that.

18 THE COURT: Well, what do you think about  
19 that, Mr. Feder: Give you from 8:30 to 11:45 on  
20 Monday morning, and you give me your Daubert argument  
21 so my antennas are up and I can be a good listener  
22 and watcher. Then that gives us four-and-a-half days  
23 to get through the class certification. What do you  
24 think about that?

25 MR. FEDER: You know, I'd like to confer

1 with my colleagues. I think that that sounds at  
2 least like it has the markings of a reasonable  
3 compromise. I do think that, you know, I liked what  
4 you said earlier about, you know, perhaps starting  
5 with the Dauberts and seeing how much time that  
6 takes, and then getting to class certification  
7 subsequent to that without, you know, necessarily  
8 bifurcating the hearing.

9 I think, like Mr. Schlesinger, and I think  
10 one of their biggest concerns is not letting the  
11 Daubert become the tail that wags the dog, because as  
12 you'll see in our papers, most of our class cert  
13 opposition is based on things that have nothing to do  
14 with the expert witnesses. And so, you know, we want  
15 to make sure that whatever focus goes to the Daubert  
16 and the expert witnesses does not end up either  
17 foreshortening or interfering with the class cert  
18 argument. So, you know, that's the primary thing  
19 that we want to have coming out of this. And, you  
20 know, so what you're suggesting sounds reasonable to  
21 me, subject to my being told by my colleagues that  
22 there is something I'm not thinking of that would be  
23 problematic about it.

24 THE COURT: Well, let's do this: I like to  
25 kind of leave one of these status conferences as firm

1 as I can. So let's plan on it. So we'll give you  
2 the morning to argue your two motions, and you've got  
3 that time to argue those. And we'll plan on right  
4 after lunch starting with Mr. Schlesinger doing the  
5 opening statement he set on class certification. If  
6 you and Mr. Schlesinger want to tweak that, I'm game.  
7 Probably whatever y'all come up with is going to be  
8 fine with me. If you can't agree, what I just  
9 outlined will be the default position, and that's how  
10 we'll start out on Monday morning, and then we'll go  
11 from there. I think the --

12 MR. FEDER: Your Honor --

13 THE COURT: I think the backstop is that if  
14 we get to the end of the week and we need more time,  
15 you know, if the defendants feel squeezed about their  
16 Daubert stuff, I can find some more time to come  
17 back, and they can make more of their Daubert  
18 presentation. But probably the train is going to  
19 leave and everything is coming in and I'm going to  
20 sort it out largely in the writing of the opinion.

21 Somebody was trying to speak. Who was I  
22 cutting off?

23 MR. FEDER: I apologize, Your Honor. Mr.  
24 Feder again. I just wanted to mention that one thing  
25 that does raise is that a number of Daubert motions



1     that plaintiffs have filed don't really go to class  
2     certification issues. And so, if what you're  
3     contemplating is sort of an early focus on the couple  
4     that do, and then class certification, I'm not sure  
5     that it's entirely clear how some of those other  
6     Daubert motions will end up fitting in, and, you  
7     know, whether to contemplate any division between  
8     constant on class certification and constant on some  
9     of these Daubert, that really just go to summary  
10    judgment or trial.

11           THE COURT: Well, I think what you're  
12    wanting is you're wanting to get your Daubert motions  
13    argued. It sounds like Mr. Schlesinger doesn't  
14    really care exactly when his Daubert issues get  
15    argued. He's not as concerned about it. He wants to  
16    get to the class certification. So I'm trying to  
17    give you a little bit of time to argue your Daubert.  
18    He seems less interested in arguing those at the  
19    first. He'll figure out how to do them either in the  
20    class certification or we'll pick another time and  
21    argue them. Am I reading you right, Mr. Schlesinger?

22           MR. SCHLESINGER: Yes, sir.

23           THE COURT: All right. So we'll structure  
24    it this way. I'm trying to get the things that are  
25    important to you at the beginning. And we'll, as the

1 week goes on, we'll either get them done or we'll  
2 have to regroup on smaller issues at a later point.

3 All right. Mr. Schlesinger, what is the  
4 next issue or topic we need to discuss?

5 MR. SCHLESINGER: Let's see, I have -- let  
6 me just look at my notes here. No, sir. The only  
7 thing I would say, and I take this up conferred with  
8 my co-counsel today is, you know -- and of course, I  
9 would do it, you know, by agreement if need be with  
10 Mr. Monde -- if we want to preserve any testimony of  
11 a witness that we present during the class  
12 certification hearing, I'd like the Court's blessing  
13 to present a witness by so-called preserved trial  
14 testimony between now and the hearing. And I'm only  
15 saying that because it occurs to me that a witness  
16 that we might want to have appear live in that  
17 December timeframe might be traveling or on holiday  
18 or not available. And in the event I find that out  
19 in the next few days, I may want to set up a video  
20 deposition for preservation to present in support of  
21 class cert on a witness that I either can't otherwise  
22 bring live or it would just be more convenient to  
23 just get that the witness in the can so that I can  
24 present all or part of it to the Court as if they  
25 were attending the actual class certification

1 hearing. In the Court permits me to do that, I'll  
2 set that up, and of course I'll clear the dates and  
3 everything with Mr. Monde.

4 THE COURT: How do you feel about that, Mr.  
5 Monde?

6 MR. MONDE: Well, Judge, let me just back  
7 up half a step. It does sound like the two sides  
8 need to agree on a schedule to share information  
9 about who they intend to actually call as witnesses  
10 at the hearing, so that we can prepare for those that  
11 are coming and not waste time preparing for witnesses  
12 that the other side has no intent of calling. So I  
13 would say that, number one.

14 Number two, if either side has a witness  
15 who is simply not available those five days in  
16 December because of business or personal reasons, I  
17 expect the two sides will work with each other to  
18 accommodate that, and in that limited instance agree  
19 on alternatives such as preserving the testimony. I  
20 heard Mr. Schlesinger at one point extend that to  
21 just as matters of convenience. And that to me  
22 would -- just falls on the other side of the line.  
23 You know, we're preparing for this hearing, and the  
24 hearing has long been scheduled from December 14th to  
25 the 18th, and so we have long expected that if there

1 are going to be witnesses called that that's when we  
2 would need to do our cross-examinations, and vice  
3 versa. And on top of all that, Mr. Schlesinger spoke  
4 in a bit of a hypothetical.

5 So the parties will confer and agree on a  
6 date by which we will exchange information about who  
7 we intend to have present, number one. And then  
8 number two, if Mr. Schlesinger has a particular  
9 witness with a business related, personal related  
10 scheduling issue as opposed to just mere convenience,  
11 then we will work with him to get that preserved.

12 THE COURT: Will, let me say this: If  
13 y'all agree on anything, it will be fine with me. If  
14 you don't agree -- somebody can correct me if I'm  
15 wrong -- discovery on class certification is over.  
16 And so if you don't agree, the default position is  
17 discovery is over. And I don't know -- whether  
18 you're preserving it for trial or whatever, it's  
19 over. But, you know, it's up to y'all. I know these  
20 are important to everybody, so whatever y'all want to  
21 do. But, you know, you probably have a deposition of  
22 these people. You've got reports of these people.  
23 You know, I think you probably have all the tools to  
24 present it. Even if you don't have a video or  
25 something that you can show me, I can read. If want

1 to dazzle me, you can put it on the screen and scroll  
2 it and highlight and all that sort of stuff for me,  
3 like -- I did that in the old days, like 2003. So,  
4 you know, I think there are ways to do it. But if  
5 you can't agree, I'm probably not going to reopen  
6 discovery so I force one side or the other to do a  
7 deposition to preserve discovery or preserve a  
8 deposition.

9 MR. SCHLESINGER: Your Honor, that's fine.  
10 If I can't work something like that out with Mr.  
11 Monde, and I don't expect it's going to be an issue.  
12 Don't give it a second thought, Judge.

13 THE COURT: Okay. All right. What's the  
14 next issue that we need to discuss, Mr. Schlesinger?

15 MR. SCHLESINGER: For the plaintiffs, Your  
16 Honor, I think -- let me look at my notes here real  
17 quick. I think that's it.

18 THE COURT: All right. I don't want to  
19 undercut you, you're lead attorney for the  
20 plaintiffs, but do you mind if I ask any of your  
21 co-counsel if they have any other issues they want to  
22 bring up, since we're having to do this by phone?

23 MR. SCHLESINGER: Oh, not at all. Please.  
24 I'm sure that Ms. Weiner has some thoughts as well,  
25 and she's on the phone. So absolutely, Judge.

1 THE COURT: Ms. Weiner, do you want to  
2 bring up any topics for us to discuss before I go to  
3 the defendants?

4 MS. WEINER: Judge, no, other than just  
5 kind of some logistical questions in terms of when  
6 the Court would like us to present it, either with  
7 our agreement on a schedule -- you know, if we should  
8 confer with Mr. Monde and his colleagues regarding  
9 the point that he raised on alerting the others who  
10 we intend to call so that we can adequately prepare;  
11 just kind of -- whether the Court would like to set  
12 that schedule now, or if we should meet and confer,  
13 work together, and submit something to the Court in  
14 terms of how we plan to handle that schedule?

15 THE COURT: Do you have a thought on that,  
16 Mr. Monde?

17 MR. MONDE: Let's meet and confer. And if  
18 we have an issue, Judge, we'll get back in touch with  
19 Juan and set a short call if needed.

20 THE COURT: Let me just tell me how I'm  
21 going to probably prepare for this hearing. At some  
22 point Juan is going to go into a massive copying job  
23 on this. And if it looks like it fits in a chair, I  
24 probably am going to drag my feet and continue to  
25 work on other stuff, since I've got one crisis after

1 another before the end of November. If, on the other  
2 hand, he fills the entire conference table, I may  
3 start freaking out and start reading it now. So the  
4 reason I say that is because -- don't worry about my  
5 schedule right now, because I don't really have a  
6 sense as to the volume of material I'm going to have  
7 to read. I just don't have a sense. Y'all probably  
8 do. And if it's a lot, and Mr. Gonzales starts  
9 copying things, then I'll probably begin to get a  
10 feel for it. So take your time. And, you know, I'm  
11 not in a hurry to see how you're structuring this  
12 thing. I'm more worried about figuring out when I'm  
13 going to begin to read these things, given what I've  
14 got to do between now and the end of November.

15 And --

16 MR. SCHLESINGER: I think there is already  
17 plenty, Judge. I'm certain we've already submitted  
18 plenty of reading material.

19 THE COURT: I figured that. So don't worry  
20 about it, Ms. Weiner; just go ahead and meet with Mr.  
21 Monde. I'm sure, when you get it to me, it will be  
22 just fine.

23 What else do you have, Ms. Weiner?

24 MS. WEINER: That's all I have, Judge.

25 Thank you.

1 THE COURT: Anybody else on the plaintiffs'  
2 side that feels like there is some topic that needs  
3 to be raised before I go to the defendants?

4 All right. Mr. Monde, Mr. Feder, what  
5 issues would you like to bring up for discussion?

6 MR. MONDE: Meir, do you have anything  
7 else?

8 MR. FEDER: I don't.

9 MR. MONDE: Judge, I would just say in  
10 fairness in response to your question, there is a  
11 significant volume of material. What does that mean?  
12 It probably exceeds the bounds of one chair, for  
13 sure. I say that not to worry the Court, or  
14 certainly not to ask the Court to start reading  
15 early. I say it only to make this point: That we  
16 will proceed as the Court has outlined in terms of  
17 getting a hearing on the two Dauberts that we have  
18 brought that do relate to class certification. I  
19 don't know whether a half day is going to be  
20 sufficient or not. I think, once the Court sees the  
21 papers on those two witnesses, the Court -- and  
22 that's again Dr. Dubay and Dr. Pearson -- I think the  
23 Court will appreciate that it is difficult to give a  
24 firm estimate of how much time would be required.

25 But more importantly to your point, these

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1 are very important issues to us. The Court has  
2 always been willing to hear us out, within reason of  
3 course, both sides. And we simply ask for that here.  
4 And the scheduling order, in fact, calls for hearing  
5 on both class certification and the Daubert motions.  
6 So hearings on the Daubert motions have, in fact,  
7 been part of scheduling order from the beginning; not  
8 just a hearing on class certification. We understand  
9 the Court wants to consider those together. We'll do  
10 that. But I just want to make the point that we  
11 would like the opportunity to present on these two  
12 Dauberts at the outset, as the Court has allowed,  
13 without feeling that we are on a very tight clock,  
14 such that at 11:45 we can't argue anything more on  
15 those two motions.

16 THE COURT: Well, if you can wrangle more  
17 time from Mr. Schlesinger, that's fine with me. But  
18 if you can't, then you're going to have to be on the  
19 clock. You'll just have to organize your  
20 presentations. Because unless Mr. Schlesinger is  
21 willing to slide a little bit on Monday and give you  
22 a little more time, we'll probably start -- not  
23 probably -- we will start the openings on class  
24 certifications at 12:45. But if y'all agree to  
25 something else, then fine. You'll just have to make

1 a compressed one, and we'll either have to circle  
2 back and do it at the end of the week or another day  
3 or we'll have to figure out some other way to give  
4 you a full opportunity to make the arguments that you  
5 want.

6 MR. MONDE: Well -- and that helps, Judge.  
7 In other words, what I hear you saying is that you  
8 want us to wrap up our presentation on those two  
9 experts for the time being or suspend it at 11:45.  
10 And then, if we feel we need additional time, the  
11 Court is willing to hear us at some point.

12 THE COURT: Yeah, I think that's your  
13 backstop is I'm not going to say that's it, 11:45, I  
14 never want to hear these motions again. I'll double  
15 back at the end of the week, if we have some extra  
16 time or set up another time. And I'm also willing,  
17 if y'all want to throw this into your discussions, if  
18 y'all want to try to find some time before this to  
19 maybe have a day or two days on Daubert motions, or  
20 something like that, I'll try to find some time  
21 between now and the time in December -- that's two  
22 months away -- to find you some more time. And if  
23 y'all want to do that, I'll give it to you, and we'll  
24 give you two days. And that way Mr. Schlesinger can  
25 come in here at 8:30 on Monday morning and get

1 started with his class certification. And we can  
2 take a day or two days, whatever you think you need,  
3 on Daubert issues, and maybe we can take some of Mr.  
4 Schlesinger's motions as well. I don't really know  
5 what those are as much, but -- so that's a  
6 possibility, too. And if y'all discuss and think  
7 that's something worth asking for or pursuing, I'm  
8 game.

9 MR. MONDE: Thank you, Judge. We'll  
10 discuss that.

11 THE COURT: Okay. What else, Mr. Monde,  
12 Mr. Feder, Mr. Schultz? Y'all have any other issues,  
13 topics you want to raise, need some guidance on  
14 today?

15 MR. MONDE: I don't think anything further  
16 from us, Judge.

17 THE COURT: Okay. All right. Is there  
18 anything else we need to discuss while we're  
19 together? Anything else I can do for you, Mr.  
20 Schlesinger?

21 MR. SCHLESINGER: Stay healthy in New  
22 Mexico, Judge. We've been through what you're going  
23 through now in New Mexico, we've been through in  
24 August here in Florida. And we just hunker down and  
25 stay healthy.

1 THE COURT: You know, after I lost my wife  
2 last year, after she passed away, I don't have much  
3 family out here. So if the Governor doesn't let me  
4 go to Texas, I don't get to see anybody. And I can't  
5 go to New York. We're such a hot spot. My boys live  
6 up in Brooklyn. I can't get up there without  
7 quarantining when I get up there, so I don't really  
8 want to go to New York and quarantine. So I'm ready  
9 to see some people is what I would like to do. But  
10 it doesn't look like it's going to happen for a  
11 while.

12 MR. MONDE: You're not alone, Judge. I  
13 think we have a raging consensus on that, Your Honor.

14 THE COURT: All right. Anything else, Mr.  
15 Schlesinger?

16 MR. SCHLESINGER: Judge, you know, I  
17 remember we had heard that you had lost your wife.  
18 And I don't know that we've ever spoken and were able  
19 to express our condolences, but everybody involved in  
20 this litigation would do that, and I will do that  
21 right now, if we haven't done it before. I heard  
22 from Randi McGinn you had. And I would like to  
23 express my condolences.

24 THE COURT: I appreciate that. Yeah, Randi  
25 lost her husband, Charlie Daniels, here a little bit

1 after that. Well, Saturday was the 18-month  
2 anniversary. And Judge Parker here, who lost his  
3 wife a few years ago, told me that the 18 months is  
4 the hardest, was one of the hardest times for him.  
5 I've talked to counselors and other people. So on  
6 Sunday, I just took the day off and got in the car.  
7 And my wife and I used to always go to Northern New  
8 Mexico, so we used to try to go up to Northern New  
9 Mexico and see the trees about this time. So I  
10 recreated our last few years' trip up there. I  
11 didn't stop and eat. I didn't think I wanted to eat  
12 alone. But I did stop and see a lot of trees, and  
13 pester the family with a lot of pictures and stuff  
14 like that. So it was a good weekend. I miss her  
15 greatly. But it was a good weekend.

16 How about you, Mr. Monde? Anything else we  
17 need to discuss while we're together? Anything else  
18 I can do for you today?

19 MR. MONDE: Nothing, Judge, except of  
20 course, we join in Mr. Schlesinger's thoughts. And  
21 I'll close where you opened, that if we can all just  
22 learn a bit more compassion from this very  
23 challenging time that we're going through, we will  
24 come out better for it.

25 THE COURT: Yeah, I went out to Placitas --

1 the local guys will know where that is -- but my  
2 wife's brother and his wife live out there. They're  
3 both from Hobbs. We all grew up together down in  
4 Hobbs together. And it was kind of interesting. I  
5 don't know if it's a combination of him losing his  
6 sister and -- or just the pandemic, but they told me  
7 that they're probably going to leave the state. They  
8 had spent 30 days this summer in Colorado at Fort  
9 Collins. They had a dog that needed some chemo, and  
10 you can't get chemo for a dog in New Mexico. That's  
11 stretching our poor state's limits. So they went to  
12 Colorado Springs, which has the veterinarian school.  
13 And they were up there in their RV for 30 days. And  
14 they just fell in love with Fort Collins. And the  
15 their son lives with his partner in Denver, and her  
16 husband, and they're in Denver. And I think they're  
17 just moving up there. So interesting times. I think  
18 whether you lose a wife or whether you just live  
19 through the pandemic, or a combination of it, I don't  
20 think we're ever going to be quite the same. We're  
21 going to make changes with our lives and do things a  
22 little different.

23 Well, listen, y'all be safe. Call Mr.  
24 Gonzales if we can do anything for you. And if y'all  
25 get off the phone and agree to something else, want

1 to go a different direction, let me know. But we  
2 stand ready to serve y'all. I was telling my law  
3 clerk -- got new law clerks here that I'm introducing  
4 to this case -- I said: This was a great idea to be  
5 an MDL judge about three years ago. Now that the  
6 work is here, I wonder how great it is. But we'll  
7 have fun together. We'll remember this when we're  
8 old and sitting on rocking chairs out in front.

9 Y'all be safe. Call us and let us know how  
10 we can help.

11 (The Court stood in recess.)  
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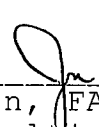
## C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
Official Court Reporter for the State of New Mexico,  
do hereby certify that the foregoing pages constitute  
a true transcript of proceedings had before the said  
Court, held in the District of New Mexico, in the  
matter therein stated.

In testimony whereof, I have hereunto set my  
hand on November 5, 2020.

  
\_\_\_\_\_  
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